

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, May 4, 2017
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Jim Jiles; Members Jim Mortimer, and Cecil Sumners; Alternate Members Gary Smith and Steven Lee; Attorney Robert Blythe; Senior Planner Jay Camp, Code Enforcement Officer Carlo McKoy, and Administrative Assistant/Deputy Town Clerk Shana Robertson

ABSENT: Vice Chairman Jerry Meek, Member Jeanne Moore, Alternate Member Peter Tuz

CALL TO ORDER/INVOCATION:

Chairman Jim Jiles called the meeting to order at 7:00 pm

Mr. Jiles gave the invocation.

Alternate Members Gary Smith and Steven Lee were appointed voting members for the night's meeting.

APPROVAL OF THE MINUTES:

Mr. Jiles made note that the April 6, 2017 minutes will need to be included as part of the record in the June agenda package for the continuation of BA2017-2.

Mr. Jim Mortimer made a motion to approve the minutes of the April 6, 2017 meeting. Mr. Cecil Sumners seconded and the motion passed unanimously.

SWEARING IN:

Senior Planner Jay Camp, Code Enforcement Officer Carlo McKoy, and Applicant Keyna Winkler were sworn in by Mr. Jiles.

VARIANCE REQUEST: BA 2017-3, Accessory Building Height at 4425 Lindsay Lane

STAFF REPORT:

Mr. Camp presented the request for a variance to allow an existing accessory structure to remain at 4425 Lindsay Lane, Mecklenburg parcel number 193-051-28. Mr. Camp said that the structure was constructed in 2006 and the property owner was advised by their contractor that a building permit was not needed. He added that staff did not know about the accessory structure until a citizen made an inquiry about several properties with items of concern in the area. Mr. Camp presented property photos to the Board and said that the structure was 86 feet from the principal structure sitting on the back of the lot.

Mr. Camp read into record section 155.601.20.B of the Unified Development Ordinance (UDO):
On parcels with single-family attached or detached dwellings, no accessory structure shall be the greater of: taller than twenty feet (20') in height; or exceed the height of the principal structure. The size of all accessory structures on such a residentially-used lot shall not exceed fifty percent (50%) of the heated area of the principal structure.

Mr. Camp said that the violation was that the accessory structure was taller than the principal structure. He added that the building did not exceed 20 feet and was placed more than three feet from the property line. Mr. Camp explained that building height was measured from the front wall to the center gable pitch. Code Enforcement Officer Carlo McKoy provided measurements of the accessory structure being 19 feet and 7 inches and the principal structure being 14 feet 8 inches. Mr. Camp said that this would give a 4 foot 11 inch difference that would require a variance to allow the accessory structure to remain.

Mr. Camp entered into record photographs taken by Mr. McKoy on May 3, 2017 (attached to the minutes as part of record. Exhibit 1-7) and informed the board that the building was just a storage structure and not garage or accessory apartment.

Mr. Lee asked if the UDO language was the same in 2006 as it is today and Mr. Camp said that the wording was the same and the way of measurement was the same. The only change was the added diagram.

Mr. Mortimer asked if there were any sunset rules on the violation being it was eleven years since it was built. Attorney Robert Blythe said there was not at this time but language was floating around the General Assembly.

Mr. Smith asked for clarification on section 155.601.20.B saying the wording of greater than the 20 feet or exceed the height of the principal structure sounded like an either/or description. Mr. Mortimer said that if it was not 20 feet in height then it would not be a violation. Discussion was had on the meaning. Mr. Blythe said there seems to be language confusion in the UDO but Code Enforcement had interpreted the wording the way it was intended. He continued saying that the accessory structure, no matter how large the principal structure, could not be higher than the principal structure and could not be higher than 20 feet.

Ms. Keyna Winkler of 4425 Lindsay Lane, Matthews, NC 28105 addressed the Board. She reviewed the history of the building and informed the Board that the contractor they hired eleven years ago said that no permit was needed. Ms. Winkler said that she had recently filed for a Mecklenburg County building permit and was asking the Town for a variance of four feet and eleven inches to have the permitting approved. Ms. Winkler said that her principal structure is on 1.6 acres around other established one plus acre residential lots. She added that the street had four homes and was a dead end road so it was not widely traveled.

Mr. Mortimer asked if there was a contract with the builder and if the builder was still in business. Ms. Winkler said that she did not have a contract and that the builder was no longer in business.

Mr. Sumners asked if the neighbor to the rear of the property had ever complained. Ms. Winkler said that she was not aware of any complaints and Mr. McKoy confirmed that the back yard neighbor had not complained. Mr. Sumners asked how far the building was from the neighbor's fence and Mr. McKoy said that it was about 12 feet away.

Mr. Jiles asked what the setbacks needed to be with an accessory structure and Mr. Camp said that the storage building was eight feet from the property line, code allows accessory units to be up to three feet from the property line. Mr. Jiles asked if utilities were connected to the storage building and Ms. Winkler said that only electric was in place. She added that there was no plumbing or gas lines running to the building. Mr. Jiles asked Mr. Camp to clarify the permitted use and Mr. Camp said it was storage only and could not be used as an accessory apartment that town code capped at 750 sqft. Mr. Jiles asked Ms. Winkler if her intended use was only storage and Ms. Winkler confirmed that it was.

Mr. Blythe asked Mr. McKoy if the building permit mentioned in his letter was a retroactive permit and Mr. McKoy said that it was.

DELIBERATION:

Mr. Lee said that with the Town's interpretation on the scale, the structure does not appear from the street view greater than the primary structure.

Mr. Jiles said that the structure may be more obtrusive to a neighbor than from the street. Mr. Mortimer said that it was wooded behind the building.

Mr. Sumners liked the idea that the structure could only be a storage unit, being 65 feet from the road in the heavily vegetated area, and the neighbor to the rear of the property had not complained.

FINDINGS OF FACT

Mr. Jiles read into the record the four Findings of Facts requirements.

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Unnecessary hardship would result from the strict application of this title. The strict application would require major modification or removal of the existing building that has been in place eleven years.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

The hardship results from conditions that are peculiar to the property, such as typography, lot size and vegetation.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The hardship did not result from the actions of the applicant but from the actions of the building contractor not getting a building permit and not meeting zoning requirements eleven years ago.

4. The requested variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The intent of the UDO requirement is to create a clear visual distinction between primary and accessory structures where the accessory structure appears clearly subordinate to the primary structure.

Mr. Sumners motioned to approve the variance request of four feet and eleven inches for the existing structure with Mr. Mortimer seconding the motion. The motion to approve carried unanimously

Mr. Jiles discussed making a recommendation to town staff and Town Board to pursue clarification of The Town of Matthews Unified Development Ordinance section 155.601.20.B to clarify the intent of the text that reads: *...no accessory structure shall be the greater of: taller than twenty feet (20') in height; or exceed the height of the principal structure.* More than one member of the Board of Adjustment had issue understanding due to wording and felt it would be better understood with the removal of *the greater of.*

ADJOURNMENT:

Mr. Smith made a motion to adjourn the meeting at 7:50 pm. Mr. Lee seconded the motion and the motion passed unanimously.

Respectfully submitted,



Shana Robertson
Administrative Assistant/Deputy Town Clerk